

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STEEL LOS III, LP, et al.,

Plaintiffs,

-against-

CALPINE CORP., et al.,

Defendants.
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ORDER

CV 05-2315 (DRH) (ARL)

LINDSAY, Magistrate Judge:

Before the court is plaintiffs' letter application, dated October 18, 2005, seeking an order scheduling an initial conference in this matter. Defendants oppose the application by letter dated October 19, 2005, asserting that the initial conference should be not scheduled nor should discovery commence in light of their pending motion to dismiss and/or to stay this action pending the resolution of related state court eminent domain proceedings brought by the plaintiffs against the New York State Power Authority. According to the defendants, the central question in both this case and the state court matter is whether the New York State Power Authority violated New York law when it took plaintiffs' property by eminent domain. For the reasons that follow, the court agrees that a stay of discovery is warranted.

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the court may stay discovery upon a showing of "good cause." Rule 26(d) authorizes the court, upon motion, to control the timing of discovery. Together, these provisions enable the court to stay discovery where resolution of a preliminary motion may dispose of the entire action. See, e.g., In re Akropan Shipping Corp., 86 Civ. 4873, 1990 WL 16097 (S.D.N.Y. Feb. 14, 1990). Here, given the fact that the pending motion to dismiss may dispose of the entire action, together with the pendency of related state court proceedings,¹ the court finds that there is good cause to stay discovery in this matter. Accordingly, discovery is stayed pending resolution of the motion to dismiss and/or to stay this action. The defendants shall apprise the undersigned in writing within two weeks of a decision on their motion.

Dated: Central Islip, New York
November 1, 2005

SO ORDERED:

/s/
ARLENE R. LINDSAY
United States Magistrate Judge

¹The court notes that the state court *sua sponte* stayed discovery in that action pending a determination of the plaintiffs' appeal of the denial of its motion for a preliminary injunction. Accordingly, this court will not permit the plaintiffs' to circumvent that order in this court.